IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

S.C. SUIT NO. 667 OF 1979

1. Bharat Rameshbhai Trivedi]
2. Chandrika Rameshbhai Trivedi]
3. Rameshbhai Ravishanker Trivedi]
4. Rameshbhai Muleshankar Trivedi]
5. Naina Rameshbhai Trivedi]
   All of Bombay, Indian Inhabitants]
   residing at A/1, Rajpiple Co-op]
   Housing Society Limited, Opposite]
   Grindlays Bank Limited, Linking]
   Road, Santacruz (W), Bombay 400 054]
6. Mulchand Jagjivandas Damania]
   of Bombay, Indian Inhabitant,]
   residing at40, Green Field,]
   Ghodbunder Road, Santacruz(W)]
   Bombay 400 054]
7. Raiwood Park Co-Operative Society]
   Limitedduly registered under the]
   Maharashtra Co-Operative Societies']
   Act, a Society having its registered]
   office at 3, Vanrai Society,]
   Raiwood, Lonavala.]..PLAINTIFFS.

Versus.

1. M. J. Halai]
2. Kiritkumar J. Halai]
   both of them residing at 107 Bazar]
   Gate Street, 4th Floor, Fort, Bombay]
   400 023, being legal heirs and]
   representatives of the original]
   defendant.]..DEFENDANTS.

Mr. M.H. Yagnik with Jay Dalal i/b. B. Munim &Co. for the Plaintiffs.

Mr. M.N. Thakore with Ms. Jyoti Ghag i/b. Thakore Jariwala & Co. for the Defendants.

CORAM : S.K.SHAH, J.

JUDGMENT RESERVED ON : 20.10.2004

JUDGMENT PRONOUNCED ON : 04.11.2004

ORAL JUDGMENT

1. This Suit is filed for specific performance of the agreement of Sale.

2. The Suit property consists of two plots bearing CTS Nos. 89 and 90 situate at Lonavala. The original defendant owned the suit plots so also the other two plots being CTS Nos. 88 and 91 situate at Lonavala. By two separate agreements, dated 14th August, 1978 the original defendant agreed to sell 3rd and 5th plaintiffs two plots, namely, CTS Nos.88 and 91 by one agreement and to the 1st and 2nd Plaintiff suit plots, namely, CTS Nos. 89 and 90 on the terms and conditions set out in the two agreement. As per the first agreement, the conveyance with regard to the CTS Nos. 88 and 91 was to be executed in October, 1978 and with regard to the Suit plots, in December, 1978. By conveyance, dated 25th October, 1978, executed by the original defendant, conveyed to the 3rd & 5th plaintiff CTS Nos. 88 and 91. The consideration under both agreements was Rs. 3,17,000/- each

3. Under the agreement, with regard to the Suit plots, the earnest money of Rs. 30,000/- was paid at the time of execution of the agreement of sale, dated

14th August, 1978. The part of the consideration of Rs. 1,00,0000/- was deposited with the Advocates M/s. Bacchubhai Munim and Company, for being paid to the original defendant's - mortgagees. The remaining consideration of Rs. 1,87,000/- was agreed to be paid by the first and second plaintiff to the original defendant, at the time of execution of the conveyance.

4. As per the terms of the agreement, immediately on execution of the agreement of sale, the original defendant was to execute the power of attorney in favour of the third plaintiff, authorising him to obtain N.A. permission as also to submit plans of lay-out of the buildings, to be constructed on the suit plots to the Lonavala Municipal Council and other authorities, for sanction. The sale in respect of the suit plot was agreed to be completed on or about 15th December, 1978.

5. The Plaintiffs allege that by their Advocate's letter, dated 15th December, 1978, addressed to the original defendant's advocate, the proposed deed of conveyance was forwarded to the original defendant's advocate to enable the original defendant to apply for and to obtain requisite certificate under Section 230(1) of the Income Tax Act, 1961. However, the original defendant, by letter dated 23rd December, 1978, addressed to the plaintiffs advocate on their office

address as well as on their residential address, demanded return of all the documents of title to the suit plots, which were agreed and liable to be delivered by the original defendant to the Plaintiffs for completion of the sale and conveyance of the suit plots and those documents were retained by the plaintiffs advocate, after the completion of the conveyance in respect of the plot Nos. 88 and 91, pending completion of the registration of the conveyance. The correspondence ensued between the plaintiffs on the one hand and the original defendant and their advocate on the other. During this correspondence, the plaintiffs advocate forwarded the draft conveyance in respect of the suit plots, alongwith the cheque for the balance consideration to the original defendant's advocate. Although the draft was approved by the advocate of the original defendant, the conveyance was refused to be executed by the original defendant and avoided the execution of the conveyance. The Plaintiffs allege that as agreed between the parties, the original defendant had handed over to the plaintiff, the possession of the suit plots, the plaintiffs obtained N.A. permission and got sanctioned the lay-out of the bungalows to be constructed and actually 70 bungalows have been constructed on the suit plot. The Plaintiffs allege that they were always ready and willing to perform their part of the contract and are still ready and willing to

perform their part of the contract. However, the defendant committed breach of the agreement and as such they have filed the suit for specific performance of the agreement of sale in respect of the agreement dated 14.8.1978, in respect of the suit plots.

6. The original defendant resisted the suit by the written statement, dated 12th July, 1979. While admitting to have executed two agreements of sale as also the conveyance deed in respect of the plot Nos. 88 and 91 he contends that the contract was voidable at his option. He contends that total price of the total land of the four plots was to be @ Rs. 35/- per square yard, however, he was induced to agree to the terms and to sell four plots by two agreement and to execute the sale deed in respect of plot Nos. 88 and 91, on the representation that at the time of execution of the subsequent sale deed for two plots, namely, Nos. 89 and 90, to be made in December, 1978, the price would be to make up the total price of all the four plots @ Rs. 35 per square yard, though in the two agreements made on 14.8.1978, the price was mentioned as Rs. 22.50 per square yard. He further contends that the plaintiffs specifically told him that this difference in the price wouldmade up later on at the time of subsequent sale deed in regard to the suit plots, which was being postponed to December, 19978 and was not being made

simultaneously with the sale deed for the plot Nos. 88 and 91. He denies that the sale deed in respect of the plot Nos. 88 and 91 was agreed to be executed in October, 1978 and that in respect of the suit Plots in December, 1978. He contends that in view of the aforesaid representations and inducement of the plaintiffs, he executed two separate agreements on 14.8.1978 as also the sale deed in respect of the plot Nos. 88 and 91 @ Rs. 22.50 per square yard. He contends that the plaintiffs, however, went back on their promise and wanted the defendant to execute the sale deed in respect of the suit plots at the same price of Rs. 22.50 per square yards. The plaintiffs gave promise and made the representations fraudulently, without intending to act as per their promise. While admitting that he did insist for return of the documents of title of all the four plots, he contends that he was forced to sign and execute the conveyance in respect of the Plot Nos. 88 and 91. He, therefore, contends that the plaintiffs had failed to perform their part of the contract and, therefore, he rightly avoided the suit agreement in respect of the suit plots and contended that he is not liable and bound to execute the conveyance deed in respect of the suit plots. On these grounds, he claim dismissal of the Suit.

7. During the pendency of the suit, the original

defendant expired and his legal representatives were brought on record. The legal representatives filed their written statement, dated 13th September, 1996 adopting the written statement of the original defendant. They added that the suit agreement is not enforciable in law and is bad in law since same is vitiated by fraud and suffers from in sufficient consideration. They contend that the original defendant, at the relevant time, was an old man and was not aware of what he was doing. In fact, at that time, the defendant No.1 was holding the power of the original defendant and had also addressed letter to the erstwhile advocate of the original defendant as also the advocate of the plaintiffs. They further contend that the suit agreement is bogus and sham transaction since the value of the suit property at that time was more than Rs. 15 lacs but the price is allegedly mentioned in the said agreement is much less and, hence, the transaction is voidable. On these contentions, they claimed dismissal of the suit.

8. In view of the pleadings, the following issues are framed, against which I have recorded my findings for the reasons mentioned below :-

ISSUES	FINDINGS.
(1) Whether an agreement of sale was arrived at between the plaintiffs and the original	..In the affirmative

	defendant in respect of sale of plots of land bearing C.T.S. No. 89 and 90 on the terms and conditions set out in Exhibit 'B' to the plaint as averred in para.4 hereof?	
(2)	Whether the plaintiffs tendered the balance of consideration amount payable by the plaintiffs to the original defendant by their cheque dated 4th January, 1979 for Rs. 1,77,750/- drawn in favour of M/s. Nalin Shah & Co. Advocate for the defendants as set out in letter dated 4th January, 1979 addressed by M/s. Bacchubhai Munim & Co. to the advocates for defendants being part of Exhibit 'E' (Collectively)?	...In the affirmative
(3)	Whether the plaintiffs had agreed to pay the price in respect of the suit transaction at the rate of Rs. 35/- per square yard as alleged in para. 3 of the written statement of the original defendant ?	... In the negative.
(4)	Whether the defendant was induced by the plaintiff to show much lesser price as the sale price in writings dated 14thAugust, 1978 and sale deed, pertaining to plot No. 89 and 90 on the representation that the consideration amount would actually be paid at the rate of Rs. 35/- per sq.yard in respect of sale of all the four plots at the time of execution of sale deed in respect of plot No. 89 and 90 as alleged in para.3 of the written statement?	... In the negative
(5)	Whether the suit agreement is voidable at the instance of the defendant as alleged in para.9 of the written statement?	...In the negative
(6)	Whether defendant has avoided the suit agreement as alleged in para 9 of the written statement?	...In the negative.

(7)	Whether the defendant approved the draft Deed of Conveyance in respect of transaction pertaining to plot Nos. 89 and 90, but subsequently backed out in respect thereof as alleged by the plaintiffs in para. 8 of the plaint ?	... In the affirmative
(8)	Whither at all material times the plaintiffs were ready and willing and the plaintiffs continue to be ready and willing to carry out their part of the suit contract as alleged in para 12 of the plaint ?	...In the affirmative.
(9)	Whether the original defendant handed over possession of the suit property to the plaintiffs as alleged in para 7 of the plaint ?	...In the affirmative.
(10)	Whether the plaintiffs are entitled to obtain a decree for specific performance of the suit agreement as prayed for by the plaintiffs by prayer (a) to (c) of the plaint?	..Yes. In affirmative.
(11)	Whether the plaintiffs are entitled to obtain any relief against the defendant and, if so, what ?	...None.
(12)	Generally?	...Suit is decreed.

REASONS

AS TO ISSUE NOS. 1 TO 4:

9. There is no dispute that the Suit agreement with regard to the suit plot No. 89 and 90 was executed by the original defendant, which is produced at Exhibit P-4. There is also no dispute that under the said agreement, the earnest money of Rs. 30000/- was paid at the time of execution of the agreement. There is

further no dispute that the original defendant received from the Plaintiffs, part of consideration of Rs. 1,00,000/-. There is also no dispute that under the suit agreement, the consideration which remain to be paid is Rs. 1,87,000/-. According to the Plaintiffs witness, the balance consideration, after deducting the half share of Stamp duty, which was required to be paid by the plaintiffs, the amount of Rs. 1,77,750/- was sent by the Plaintiffs to the defendant's advocate M/s. Nalin Shah and Company alongwith their letter, dated 3.1.1979. That letter is at Exhibit P-18. There is no dispute that this letter was received by M/s. Nalin Shah and Company, original defendant's advocate on 9.1.1979, as could be seen from the acknowledgement appearing at the end of the said letter. The letter clearly mentions about the cheque for the aforesaid amount of Rs. 1,77,750/- having been sent alongwith the said letter, after deducting the amount of Rs. 9250/- being the moiety of stamp duty and registration charges. It, however, appears that the said cheque was not encashed by the original defendant as according to the original defendant, he had avoided the contract by letter, dated 23rd December, 1978 [Exhibit P-16]. From this evidence, it is established that the disputed agreement was executed by the original defendant, under which two suit plots, namely, plot Nos. 89 and 90, situate at Lonavala, were agreed to be sold for a

consideration of Rs. 3,17,000/-, as indicated in the agreement at exhibit P-4. The consideration of Rs. 1,30,000/- was already paid and the balance was Rs. 1,87,000/- for which Rs. 1,77,750/- were offered by cheque to the original defendant’s advocate.

10. The contention of the original defendant as also his legal representatives, with regard to the suit agreement is that the agreed price of the four plots was Rs. 35/- per square yard and not Rs. 22.50 per square yard, as shown in the suit contract. Further contention of the defendants is that the plaintiffs obtained the execution of the suit agreement by inducement and representation that the price of Rs. 35/- per square yard would be adjusted in subsequent conveyance with regard to the suit plot. It is also the contention of the defendants that the suit agreement is not enforceable in law and is bad in law since it is vitiated by fraud and suffered from insufficient consideration. However, there is absolutely no evidence to prove all the contentions raised by the defendants in their written statement. These contentions have come forward for the first time in written statement, filed by the the original defendant and subsequently filed by the legal representatives.

. What is pertinent to be noted is that no such contention was ever raised during the correspondence that ensued between the advocates of the parties. Therefore, it is an after thought. Moreover, it has also not been proved by any cogent evidence. The defendant's witness has tried to claim to have knowledge about the aforesaid transactions and particularly, with regard to the agreed price of Rs. 35/- per square yard. However, in cross-examination, he clearly admitted that he has no personal knowledge in respect to the suit agreement as well as the other agreement, with regard to the plot No. 88 and 91. He further clearly stated that the original defendant executed the agreement without his knowledge and that he was not present, when the original defendant i.e. his father gave instructions about this agreement to his advocate Mr. Nalin Shah. As such, there is no proof although there are pleadings regarding the rate of Rs. 35/- per square yard and regarding inducement, representation and fraud.

10. On the contrary, a perusal of the contents of the said agreement [Exhibit P-4] would show that the original defendant had sold all the four plots including two suit plots as he was heavily indebted to the other share brokers with whom the properties were mortgaged and for the purpose of getting that mortgage redeemed. The defendant's witness has admitted all these facts.

The release deed executed by the mortgagees is produced at Exhibit P-29, which is dated 25th September, 1978. The Plaintiffs witness has stated that he did not know the original defendant before the suit transaction and he came in contract with the original defendant only at the time of negotiations with regard to the suit plots and other two plots. Under these circumstances, the Issue No. 1 and 2 shall have to be answered in the affirmative and issue Nos. 3 and 4 shall have to be answered in the negative and they are answered accordingly.

AS TO ISSUE NOS. 5, 6 AND 8.

11. The original defendant contended that he legally avoided the contract as the Plaintiffs failed to perform their promise and to act upon the representations made by the Plaintiffs, he was induced to execute the agreements dated 14.8.1978 and the conveyance dated 25.10.1978, in respect of the plot Nos. 88 and 91. The contention is that the plaintiffs went back on their words of paying the price @ Rs. 35/- per square yard and, therefore, the original defendant rightly avoided the contract.

. Avoidance of the contract or the revocation of the contract by the original defendant, as pointed out

by the learned Counsel for the defendant, was by the letter, dated 23rd December, 1978 [Exhibit P-16]. A perusal of this letter would show that by this letter, the original defendant had written to the plaintiffs advocate M/s. Bacchubhai Munim & Co. that they shall return to him all his Lonavala property documents before 30.12.1978, directly to him or to his Solicitors M/s. Nalinbhai Shah, with instructions to hand over them to him.

12. The learned Counsel for the plaintiffs vehemently submitted that by this letter, the contract was not avoided nor was revoked as in his submission, only the documents were called back. On the other hand, the learned Counsel for the defendants submitted that calling back the documents had an implication of revoking the contract.

. A perusal of the letter does not indicate that the contract was revoked. What was indicated in the letter was only that the original defendant had called for the documents before 30.12.1978. The reason for calling for these documents has not been mentioned. It is admitted that these documents pertain to Lonavala properties, namely, four plots including the two suit plots, which were handed over to M/s. Bacchubhai Munim

& Company, the Solicitors of the Plaintiffs, at the time of execution of the conveyance deed, dated 25.10.1978, in respect of the plot Nos. 88 and 91. That has been more specifically mentioned in the letter, dated 4th January, 1979 [Exhibit P-18], addressed by the Plaintiffs advocate Bacchubhai Munim & Co. to the defendant's advocate M/s. Nalin Shah & Co. The letter specifically mentions that the title deeds to the suit plots were allowed to remain with the plaintiffs Solicitors because the title deeds were to be handed over, in any event, to the plaintiffs on execution of the conveyance of the suit property. The letter clarifies that these title documents were handed over to the Plaintiffs' advocate/Solicitors, at the time of execution of the conveyance deed, dated 25.10.1978 in respect of plot Nos. 88 and 91 and, therefore, it was mentioned in the letter that, in any case, they were to be handed over to the plaintiffs at the time of execution of the conveyance deed in respect of the suit plots. By that letter, it was further clarified that the plaintiffs were ready and willing to perform their part of the contract, namely, payment of balance consideration and the same was sent alongwith the cheque for Rs. 1,77,750/-, after deducting the amount of Rs. 9250/- towards moiety of stamp duty and registration charges, payable by the defendant. This also indicates that there was in fact no revocation of the contract or

the contract was not avoided by the original defendant.

. In this regard, it has further to be noted that in subsequent two letters, dated 5.2.1979 [Exhibit P-19] and letter dated 16.2.1979 [Exhibit P-20], the original defendant had demanded the property documents specifically mentioning therein that he will return the Covenant given by the plaintiffs advocate, duly signed by him. This means that by these letters, the original defendant had shown his willingness to execute the conveyance deed, in respect of the suit plots. This further clarifies that by letter dated 23.12.1979 [Exhibit P-16], the original defendant had neither avoided the contract nor revoked the same.

. On the contrary, the plaintiffs were ready and willing to perform their part of the contract, as indicated by a cheque sent to the original defendant's advocate by the plaintiffs' advocate alongwith the letter, dated 4.1.1979 [Exhibit P-18].

. At the cost of repetition, it needs to be mentioned that the cheque for Rs. 1,77,750/-, after deducting the amount of moiety of stamp duty and registration charges, was sent to the original defendant's advocate. That indicates performance of the part of the contract by the Plaintiffs. As indicated

above, the subsequent letters dated 5th February, 1979 and 16th February, 1979 [Exhibit P-19 & 20] respectively, also indicate that the original defendant was ready and willing to perform his part of the contract i.e. execution of the conveyance deed. Since the cheque for Rs. 1,77,750/- was not encashed, the plaintiffs have deposited in court, in this suit, the amount of Rs. 1,87,000/-being the amount of balance of consideration, in respect of the suit plots. All this evidence is sufficient to indicate that the plaintiffs were and are ready and willing to perform their part of the contract. Therefore, the Issue Nos. 5 & 6 shall have to be answered in the negative and issue No. 8 shall have to answered in the affirmative and are answered accordingly.

AS TO ISSUE NO. 7.

13. This issue does not arise. Even if it arises, it has to be answered in the affirmative. It is because by letter, dated 7.12.1978 [Exhibit P-12], plaintiffs' advocate had sent to the original defendant's advocate M/s. Nalin Shah and Company, the draft conveyance for approval. By letter dated 13th December, 1978 [Exhibit P-13], M/s. Nalin Shah & Co. sent back the draft conveyance to the Plaintiffs advocate after approving the same. The draft conveyance is attached to the

letter, dated 13th December, 1978 [Exhibit P-13] and at the end of this agreement, there is docket of M/s. Nalin Shah bearing endorsement as "approved", under the signature of Nalin Shah, advocate for the vendor i.e. the original defendant.

. As stated above, by letters dated 5.2.1979 and 16.2.1979, Exhibit P-19 and 20 respectively, the original defendant had indicated his readiness and willingness to execute the conveyance deed. However, subsequently, the original defendant backed out. Therefore, this issue shall have to be answered in the affirmative and answered accordingly.

AS TO ISSUE NO. 9

14. It is not in dispute that the original defendant had handed over the possession of the suit plots to the plaintiffs, immediately after the execution of the suit agreement of sale on 4.10.1978, as stated by the plaintiffs witness. That evidence has not been challenged. It is further unchallenged position that after getting possession of the suit plot as well as other two plots, namely, plot Nos. 88 and 91, the plaintiffs, after getting N.A. permission and after getting the lay out plans approved from the Municipal Council Lonavala developed the property and at present

there are around 70 bungalows standing over these plots. At no point of time, either the original defendant or his legal representatives, the present defendants had challenged the same. Neither the original defendant nor the present defendants, the legal representatives of the original defendant had filed any suit for getting possession of those plots and for declaration that the suit agreement was void or otherwise. The defendant's witness admitted in cross-examination that he used to visit the suit plots more than once in a year. He admits that some bungalows have been constructed on those plots and they are about 40 to 50 bungalows. He also admits that the construction of these bungalows started after the agreement was executed. As such the issue No. 9 will have to be answered in the affirmative and is answered accordingly.

AS TO ISSUE NOS. 10, 11 AND 12.

15. As stated above, the plaintiffs were always ready and willing to perform their part of contract as they had sent the cheque for balance of consideration to the original defendant's advocate alongwith letter dated 4th January, 1979 [Exhibit P-18]. The draft conveyance was also sent by the Plaintiffs' advocate to the original defendant's advocate and the original defendant's advocate had approved the draft and sent it back to the plaintiffs' advocate. Not only that but the

original defendant had also indicated by the letters dated 5.2.1979 and 16.2.1979 [Exhibit P-19 and 20] respectively, the willingness to execute the conveyance deed, however, subsequently, he backed out.

16. The question is whether under these circumstances, the Plaintiffs are entitled to specific performance of the suit agreement.

. In this regard, the learned Counsel for the defendants vehemently submitted that whether or not to grant the specific performance is within the discretion of the Court. He further submits that this discretion should not and cannot be exercised in favour of the Plaintiffs by granting the relief of specific performance. He submits that the plaintiffs were in advantageous position; whereas the original defendant was not completely free in negotiating position. It is an admitted fact that at the time of execution of the suit agreement and other agreements in respect of plot Nos. 88 and 91, the original defendant was heavily indebted and his properties were mortgaged to the share-brokers. The learned Counsel for the defendants therefore contend that in view of the provisions of Section 20(2)(c) of the Specific Relief Act, 1963, the discretion as to grant of specific performance of the suit agreement cannot be exercised in favour of the

Plaintiffs. On the other hand, the learned Counsel for the Plaintiffs submitted that it is established that the plaintiffs came in contact with the original defendant, only at the time of entering into the negotiations with regard to the suit agreement and before that the plaintiffs had no concern with the original defendant. Therefore, the provisions of Section 20(2)(c) of the Specific Relief Act are not attracted to the present case. He further submits that in fact, the original defendant was in need of money as he was heavily indebted and, therefore, of his free will, he sold the suit plots and the other two plots to the plaintiffs.

. I have given consideration to these submissions. The fact that the plaintiffs did not know the original defendant since before the suit transaction, has been established. It is also undisputed that the original defendant was heavily indebted and he had mortgaged the property to other share brokers, to whom he was indebted. The suit agreement [Exhibit P-4] itself shows the purpose of selling the suit plots to the plaintiffs and i.e. for paying off the creditors, the brokers with whom the properties were mortgaged and for getting mortgage released. It is also proved as per the release deed, that after the original defendant received the payment of part of consideration in respect of the two agreements, he paid off his mortgagees and got the

mortgaged property released. These circumstances, therefore, do not indicate that the original defendant entered into the suit agreement under such circumstances, as would render the contract voidable or make it inequitable to enforce specific performance. There is also no evidence to show that the prices prevailing at the time of execution of the suit agreement were higher than the price, at which the suit plots and other two plots were agreed to be sold to the plaintiffs. It is material to note that the plaintiffs' were not being in fiduciary relation with the original defendant so that the plaintiffs were in a commanding position and would have influenced the suit contract.

17. Under these circumstances and also because the other circumstances of handing over the possession of the suit plots to the plaintiffs by the original defendant, for the the purpose of development and the plaintiffs having actually developed the property, in my view, there is no other better equitable relief than grant of specific performance of the suit agreement, in favour of the plaintiffs. The original defendant had avoided to perform his part of the contract, after showing his readiness and willingness to execute the conveyance deed in respect of the suit plots. That was done without any reason whatsoever and, hence, the relief of specific performance of the contract shall have to be granted in

favour of the Plaintiffs.

18. It was also tried to be submitted on behalf of the defendants that in fact, the original defendant's advocate Mr. Nalin Shah had no authority to approve the draft agreement, as the original defendant had clearly withdrawn that authority to finalise the suit agreement. However, the correspondence, particularly, the letter dated 16th February, 1979 [Exhibit P-20], which was addressed by the original defendant personally to the plaintiffs' advocate, mentions that he was prepared to sign and to give any other covenant on stamp paper as it was prepared previously. It mentions that " I am prepared to sign and give another covenant on stamp paper as it was prepared previously. I have also one copy of conveyance with me". In the same letter it has been mentioned by the original defendant that " the plaintiffs' advocate should not hand over to M/s. Nalin Shah, his Lonavala documents." Even after having mentioned so, the letter further mentions that " Mr. Nalin Shah & Company is his Solicitors in the matters of Lonavala property and also in the matters of share brokers, who are also involved in his Lonavala property and also in agreement made with Mr. Ramesh Trivedi and others, namely the Plaintiffs". This letter, therefore, clearly indicate that the authority of M/s. Nalin Shah in respect of the suit transaction was never withdrawn

much less to the knowledge of the plaintiffs. The letter, on the contrary fortifies that M/s. Nalin Shah & Co. continued to be the original defendant's Solicitors in the matters of Lonavala properties i.e. the suit property and also with regard to the agreement made with Mr. Ramesh Trivedi i.e. the third plaintiff. Therefore, I do not find any merit in the submissions made on behalf of the defendants.

19. The learned Counsel for the Plaintiffs submitted that since the stamp duty and registration charges have increased, the amount equal to the difference between the stamp duty and registration charges payable on the date of the suit agreement and those would be payable at the time of execution, should be allowed to be deducted from the amount of the remaining consideration, deposited in Court and the entire charges of moiety of stamp duty and registration charges shall be directed to be paid by the defendants. On the other hand, the learned Counsel for the defendants submits that there is no need to penalise the defendants in such a manner. The learned Counsel for the plaintiffs also submits that amount of interest earned on the deposit made by the plaintiffs of Rs. 1,87,000/- shall be allowed to be paid to the plaintiffs.

20. I have given consideration to these submissions,

however, I do not find that the submissions made on behalf of the plaintiffs to be proper. The reasons for increase in the stamp duty was not in the hands of the defendants. So far as the amount of the consideration deposited by the plaintiffs, it was exclusively for the defendants. Therefore, the amount of interest earned thereon cannot be given back to the plaintiffs. It was for the benefit of the defendants. The amount of moiety of stamp duty and registration charges shall have to be paid as per the agreement.

21. Under these circumstances, the suit has to be decreed in terms of prayer clause (a), (b) and (c). Hence, the Order :-

ORDER

(1) The Suit is decreed in terms of prayer clause (a), (b) and (c).

(2) The defendants shall pay the plaintiffs costs.

(3) Decree be drawn up accordingly.

[S.K.Shah, J.]

Godbole

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISCITION

S.C. SUITNO. 667 OF 1979

Date of Decision : **November 4, 2004.**

For Approval and Signature :

The Honourable **Mr. Justice S.K. Shah :**

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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ORDINARY ORIGINAL CIVIL JURISDICTION
S.C. SUIT NO. 667 OF 1979

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Versus.

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2. Kiritkumar J. Halai]
   both of them residing at 107 Bazar]
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   400 023, being legal heirs and]
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Mr. M.H. Yagnik with Jay Dalal i/b. B. Munim &Co. for the Plaintiffs.

Mr. M.N. Thakore with Ms. Jyoti Ghag i/b. Thakore Jariwala & Co. for the Defendants.

CORAM : S.K.SHAH, J.

JUDGMENT RESERVED ON : 20.10.2004

JUDGMENT PRONOUNCED ON : 04.11.2004

For the Reasons separately recorded in the Judgment, the

Honourable Court has passed the following Order :-

ORDER

"(1) The Suit is decreed in terms of prayer clause (a), (b) and (c).

(2) The defendants shall pay the plaintiffs costs.

(3) Decree be drawn up accordingly."

D.V.Godbole
P.A. to S.K.Shah, J.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

S.C. SUIT NO. 667 OF 1979

1. Bharat Rameshbhai Trivedi & Ors.. ..PLAINTIFFS.

Versus.

1. M. J. Halai & Anr. ..DEFENDANTS.

Mr. M.H. Yagnik with Jay Dalal i/b. B. Munim &Co. for the Plaintiffs.

Mr. M.N. Thakore with Ms. Jyoti Ghag i/b. Thakore Jariwala & Co. for the Defendants.

CORAM : S.K.SHAH, J.

TDATE : 04.11.2004

P.C.

. The learned Counsel for the defendants requests for staying the operation of the order for a period of eight weeks. The learned Counsel for the Plaintiffs has no submission to make.

. The Operation of the Order is stayed for a period of eight weeks.

.....

[S.K.Shah,J.]